

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 1384 of 1995

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANHARLAL VADIDAL VAGHJIYANI
VERSUS
JAMNAGAR SUNNI MUSLIM WAKAF TRUST

Appearance:

MR SM SHAH for the Petitioner
MR SUNIL SHAH for Respondent No. 3
None present for other Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 30/12/1999

C.A.V. JUDGMENT

1. It is the plaintiff - tenant's revision

application arising from the order of the learned trial court under which it has not permitted him to tender alleged carbon copy of rent note in evidence.

2. Relying on the decision of this court in the case of Patel Maganbhai Bapujibhai vs. Patel Ishwarbhai Motibhai and others reported in AIR 1984 GUJARAT 69, learned counsel for the petitioner submits that all evidence which is produced as secondary evidence should have been permitted.

3. On the other hand, learned counsel for the respondent relying on many of the decisions of this court contended that it is not a case decided, and the revision application is not maintainable.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. I find sufficient merits in the contention of the learned counsel for the respondent that it is not a matter where the interference of this court is called for under section 115, C.P.C. Learned trial court has ample jurisdiction to admit the document on record or not to admit the same. If such an order is erroneous in fact or law, the same can not be corrected by the revisional court. Remedy lies for the aggrieved party to challenge such orders when appeals are filed against the ultimate judgment and decree of the trial court. When the court admits the document or refuses to admit it in evidence, it is not deciding the case but it is deciding the question under the Evidence Act and the revision may be incompetent.

6. It is fruitful here to refer the decision of the Apex Court in the case of D.L.F. Housing Co. vs. Sarup Singh reported in AIR 1971 SC 2324. The court has stated that the order of the lower court could not be interfered with in exercise of revisional jurisdiction under section 115, C.P.C. merely because this court would have felt inclined to had it dealt with the matter initially to come to a different conclusion in the matter. While exercising revisional powers it is not competent to this court to correct the errors of fact howsoever gross or errors of law unless such errors have relation to jurisdiction of the court to try the very dispute itself. The court stated that the words "illegally" and "with material irregularity" as used in clause (c) of subsection (1) of section 115, C.P.C. do not cover either errors of fact or of law they do not refer to the decision arrived at but merely to the

manner in which it is reached. The error contemplated by this clause may relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after prescribed formalities have been complied with.

7. Otherwise also, in this case, if the order impugned in this revision application is allowed to stand it will not occasion any failure of justice or will cause any injury to the petitioner. If ultimately he fails in the suit, it is always open to him to challenge this order while challenging the ultimate decision and decree of the court below.

8. In the result, this civil revision application fails and the same is dismissed. Rule discharged. interim relief, if any, granted by this court stands vacated. No order as to costs.

zgs/-